



Federal Communications Commission

DA 02-3215

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations.
(Laramie, Wyoming and
Timnath, Colorado)

MB Docket No. 02-365
RM-10451

NOTICE OF PROPOSED RULE MAKING

Adopted: December 6, 2002

Released: December 9, 2002

Comment Date: January 30, 2003

Reply Comment Date: February 14, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division considers herein a petition for rule making filed on behalf of Laramie Mountain Broadcasting, L.L.C. ("petitioner"), licensee of Station KIMX, Laramie, Wyoming. Petitioner requests the substitution of Channel 288C2 for Channel 288C3¹ at Laramie, the reallocation of Channel 288C2 to Timnath, Colorado, an incorporated community, as its first local aural transmission service, and modification of its authorization accordingly. Petitioner also filed a supplement to its petition for rulemaking to include a letter from the mayor of Timnath, setting forth the attributes of that community for allotment purposes. Petitioner stated its intention to apply for Channel 288C2 if it is reallocated to Timnath, as requested.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.² The allotment of Channel 288C2 at Timnath, Colorado, is mutually exclusive with its allotment at Laramie, Wyoming. The communities are located 47.4 kilometers (29.4 miles) apart, while the Commission's Rules requires a separation of 190 kilometers (118 miles) between Class C2 co-channel allotments. In further support of the proposal, petitioner claims that adoption of its proposal will result in a preferential arrangement of allotments consistent with the *Revision of FM Assignment Policies and Procedures*.³ The reallocation will

¹ Prior to filing this rule making request, petitioner filed a one-step application (File No. BPH-20001128ABB) to specify operation on Channel 288C2 at Laramie. The application was granted on February 12, 2001.

² See *Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O")*, 4 FCC Rcd 7094 (1990), *recon. granted in part "Change of Community MO&O"*, 5 FCC Rcd 7094 (1990).

³ *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters.

provide Timnath (population 223)⁴ with its first local transmission service (priority three). and will not deprive Laramie (population 27,204) of local Service (priority four). Laramie will continue to receive local service from at least six stations.

3. Although Laramie, Wyoming, is not in an urbanized area, Timnath is within the Fort Collins Urbanized Area. In accordance with Commission policy, if a rulemaking proponent intends to move its authorized facility to a community that is within an Urbanized Area, the proponent is required to demonstrate that the intended city of license is sufficiently independent of the central city to justify a first local service preference.⁵ The petitioner provided a Tuck analysis to demonstrate that Timnath is sufficiently independent of Fort Collins and deserves to have its first local service.⁶ Petitioner advises that Timnath is incorporated and that the community contains its own post office and zip code, churches, businesses, restaurants, schools, volunteer fire department and government.

4. As the transmitter site for Station KDMX must be relocated to accommodate the reallocation request at Timnath, gain and loss areas will be created. Petitioner advises that from its proposed transmitter site identified in its Engineering Statement, its proposal would result in 60 dBu coverage to approximately 8,040 square kilometers containing 256,300 people, compared to its current coverage of approximately 4,590 kilometers containing 30,500 people. According to petitioner, the entire gain/loss areas are well served during the day by five or more reception services, as reported in its Engineering Statement.

5. A staff engineering analysis differs from petitioner's gain projections. The fundamental difference in coverage projections is attributable to the methodologies employed. With regard to FM services, petitioner's analysis applied an alternate propagation methodology rather than use the standard propagation methodology at the allotment stage (which assumes omnidirectional signals and uniform terrain for all existing FM services that would overlap any portion of the gain or loss areas). When the F(50,50) coverage predictions specified in Section 73.313 of the Commission's Rules is employed, we find that the proposal will result in a net gain of 244,334 people and an area of 3,747 square kilometers. Also, within the gain area, the proposal will provide a new service to an unpopulated area of 21.6 square kilometers currently receiving two services; an unpopulated area of 17.3 square kilometers currently receiving three services; and

(Co-equal weight is given to priorities (2) and (3).)

⁴ Population figures reported herein were taken from the 2000 U.S. Census

⁵ See e.g., *Parker and Sr. Joe, Florida*, 11 FCC Rcd 1095 (1995).

⁶ See *Huntington Broadcasting Co. v. F.C.C.*, 192 F.2d 33 (D.C. Cir. 1951); *RKO General, Inc. ("KFRC")*, 5 FCC Rcd 3222 (1990); and *Faye and Rirhard Tuck ("Tuck")*, 3 FCC Rcd 5374 (1988).

¹ Our engineering analysis reveals that in addition to plotting clear channel AM facilities, petitioner also considered local AM stations, using the 0.5 mV/m groundwave contour as if they were clear channel stations. In order to consider those AM stations in the petitioner's analysis, they should have been plotted using the Nighttime Interference Free contour (RSS) rather than the 0.5 mV/m groundwave contour. Our analysis did not use any local AM stations, and no clear channel AM stations are impacted by our study.

an unpopulated area of 13.8 square kilometers currently receiving four services. Our engineering analysis has also determined that the projected loss area is well-served by five or more stations and is considered to be well served.⁸

6. In view of the interest expressed in providing a first local aural transmission service at Timnath, we will propose the reallocation of Channel 288C2 to that community, as requested. Since the petitioner's request is consistent with the provisions of Section 1.420(i) of the Commission's Rules, we shall propose to modify the authorization for Station KIMX as requested, without entertaining competing expressions of interest in the use of Channel 288C2 at Timnath, or requiring petitioner to demonstrate the availability of an additional equivalent channel for use by other parties.

7. Channel 288C2 can be allotted to Timnath, Colorado, consistent with the minimum distance separation requirements specified in Section 73.207(b)(1) of the Commission's Rules at a restricted site located 31.9 kilometers (19.8 miles) northwest of the community at coordinates 40-44-31 **NL** and 105-14-15 **WL**. This proposal is located within the protected areas of the Table Mountain Radio Receiving Zone ("Zone"), Boulder County, Colorado. Therefore, if this proposal is granted, petitioner will be required to consult with the Department of Commerce prior to **filing** its application to implement the change of community of license to specify Timnath, Colorado, regarding the need to protect the Table Mountain Radio Zone. See Section 73.1030(b)(2) of the Commission's Rules.

8. In consideration of the above, we seek comments on the proposed amendments to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Timnath, Colorado	--	288C2
Laramie, Wyoming	236C, 244C2, 254A, 275C, 283C2, 288C2 ¹⁰	236C, 244C2, 254A, 275C, 283C2

9. **The** Commission's authority to institute rule **making** proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by

⁸ See *La Grange and Rollingwood, Texas*, 10 FCC Rcd 3337 (1995). See also *Family Broadcasting Group*, 53 **RR** 2d 662 (Rev. Bd. 1983), *rev. denied* FCC 83-559 (Comm. November 29, 1983) [The Commission has considered five or more reception services to be "abundant"].

⁹ Petitioner **should** consult with the Radio Frequency Coordinator, Department of Commerce, Research Support Services, **NOAA** R/E5X2, Boulder Laboratories, Boulder, CO 80303; telephone (303) 497-6548.

¹⁰ As indicated earlier, on February 12, 2001, the authorization for Channel 288C3, Laramie, **Wyoming**, was amended by a one-step application to specify Channel 288C2. The FM Table of Allotments will be amended to reflect the change.

reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before January 30, 2002, and reply comments on or before February 14, 2003, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 12th Street, SW; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Wray Fitch, III, Esq.
Gannon & Grange, P.C.
8280 Greensboro Drive, 7th Floor
McLean, VA 22102-3807

11. Parties who chose to file by paper must file an original and four copies of each filing. Filings may be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules."

13. For further information concerning this proceeding, contact Nancy Ioyner, Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the

¹¹ See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

Commission specifically waives this service requirement. Any comment, which has not been served on the petitioner, constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Conunents are invited on the proposal discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.